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17 **UNITED STATES DISTRICT COURT**
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19 **CENTRAL DISTRICT OF CALIFORNIA**
20 **WESTERN DIVISION**

21 MS. J.P., MS. J.O., AND MS. R.M., on
behalf of themselves and all others
22 similarly situated,

23 Plaintiffs,

24 v.

25 JEFFERSON B. SESSIONS III,
ATTORNEY GENERAL OF THE
26 UNITED STATES; KIRSTJEN
NIELSEN, SECRETARY OF
27 HOMELAND SECURITY; U.S.
DEPARTMENT OF HOMELAND
28 SECURITY, AND ITS SUBORDINATE

Case No. 2:18-cv-06081-JAK-SK

Assigned to: Hon. John A. Kronstadt

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' RESPONSE TO
COURT'S JANUARY 7, 2019 ORDER**

1 ENTITIES; U.S. IMMIGRATION AND
2 CUSTOMS ENFORCEMENT; U.S.
3 CUSTOMS AND BORDER
4 PROTECTION; ALEX M. AZAR II,
5 SECRETARY OF HEALTH AND
6 HUMAN SERVICES; U.S.
7 DEPARTMENT OF HEALTH AND
8 HUMAN SERVICES; SCOTT LLOYD,
9 DIRECTOR OF THE OFFICE OF
10 REFUGEE RESETTLEMENT; OFFICE
11 OF REFUGEE RESETTLEMENT;
12 DAVID MARIN, LOS ANGELES FIELD
13 OFFICE DIRECTOR, U.S.
14 IMMIGRATION AND CUSTOMS
15 ENFORCEMENT; LISA VON
16 NORDHEIM, WARDEN, JAMES A.
17 MUSICK FACILITY; MARC J. MOORE,
18 SEATTLE FIELD OFFICE DIRECTOR,
19 U.S. IMMIGRATION AND CUSTOMS
20 ENFORCEMENT; LOWELL CLARK,
21 WARDEN, TACOMA NORTHWEST
22 DETENTION CENTER,
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Defendants.

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1 Plaintiffs, Ms. J.P., Ms. J.O., and Ms. R.M., on behalf of themselves and all others
2 similarly situated, respectfully submit this response to Defendants' Response to the
3 Court's January 7, 2019 Order, dated February 7, 2019. Plaintiffs submit this response
4 to reiterate that the putative class in this action is not coextensive with the class in *Ms.*
5 *L. v. U.S. Immigration and Customs Enforcement*, No. 18cv428 (S.D. Cal.) and to bring
6 to the Court's attention that the data provided by Defendants is therefore incomplete.

7 On January 7, 2019, this Court ordered Defendants to "file an update with respect
8 to whether any of the putative class members who have been detained remain in
9 detention, and if so, how many," and to "provide any available update on the number
10 of putative class members who have been released, the number of such members who
11 have been reunited with their children and the number of such members, if any, who
12 have departed from the United States and are no longer seeking entry." ECF 175.
13 Defendants' response to the January 7, 2019 order submits the data report filed in the
14 *Ms. L* case on February 6, 2019, and "draw[s] upon data reflected in [that] report." ECF
15 193 at 1. Defendants state that this approach is "[c]onsistent with the position that the
16 putative class in this case is coextensive with the class certified in" the *Ms. L* case. *Id.*

17 Although the putative class in this case and the certified class in the *Ms. L* case
18 overlap, the two classes are not "coextensive." The proposed class definitions in both
19 cases are similarly worded, but the class certified in *Ms. L* specifically excludes parents
20 with a "criminal history or communicable disease, or those who are in the interior of
21 the United States or subject to the [June 20, 2018 Executive Order]." *Ms. L., et al. v.*
22 *U.S Immigration and Customs Enforcement, et al.*, 18-cv-0428 (MDD), Dkt. No. 82
23 (S.D. Cal. June 26, 2018). As Plaintiffs have previously explained, those limitations do
24 not apply here. *See* ECF 168 at 4, n.4.

25 In addition, the government has taken the position in the *Ms. L* matter that the
26 *Ms. L* class is limited to parents whose children were in custody on June 26, 2018 or
27 later. *See Ms. L., et al.*, 18-cv-0428 (MDD), Dkt. No. 351 at 11. The government bases
28 this view on the date of the *Ms. L* court's class certification order. *Id.* The *Ms. L*

1 Plaintiffs' motion to clarify that the class is not so limited remains pending. *See Ms. L.,*
 2 *et al.*, 18-cv-0428 (MDD), Dkt. No. 335. In any event, the June 26, 2018 date has no
 3 bearing on the scope of the putative class in this matter. Separated families whose
 4 children were released prior to June 26, 2018 are within the putative class in this
 5 litigation.

6 Plaintiffs here seek to have the government fulfill its constitutional duty to
 7 provide the required mental health services to all families traumatized by the family
 8 separation policy. Many families excluded from the *Ms. L* class, or whom the
 9 government seeks to exclude from that class, are suffering and will continue to suffer
 10 the harmful effects of the government's separation policy if the failure to provide the
 11 necessary medical treatment continues. Thus, Plaintiffs' have focused on all parents
 12 who were, are, or will be detained, and have been, are, or will be separated from their
 13 children, absent a demonstration in a hearing that the parent is unfit or presents a danger
 14 to the child.

15 Accordingly, contrary to the government's position, this class and the *Ms. L* class
 16 are not "coextensive." Because the government's response to this Court's January 7,
 17 2019 order is based solely on the *Ms. L* data, it does not reflect all putative class
 18 members and is therefore incomplete.

19 For these reasons, Plaintiffs respectfully ask the Court to require Defendants to
 20 supplement their response to include all putative members of the proposed class.

21 Dated: February 11, 2019

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 555 West Fifth Street, Suite 4000, Los Angeles, California 90013.

On February 11, 2019, I served the foregoing document(s) described as **PLAINTIFFS' RESPONSE TO DEFENDANTS' RESPONSE TO COURT'S JANUARY 7, 2019 ORDER** on all interested parties in this action by the method described below:

I electronically filed the foregoing with the Clerk of District Court using its CM/ECF system, which electronically provides notice.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Amy P. Lally
Amy P. Lally
Attorneys for Plaintiffs